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OFFICE OF PETITIONS

In re Application of :
John Dobbs :
Application No. 10/787,270 :
Filed: February 26, 2004 : ON PETITION
Attorney Docket Number: :
56230-594 (ANA-246) :

This is in response to the correspondence entitled Response to Notice of Omitted Item(s) in a Nonprovisional Application, filed August 10, 2004. The correspondence is properly treated as a petition under 37 CFR 1.53¹.

Application papers in the above-identified application were filed on February 26, 2004. On July 30, 2004, the Office of Initial Patent Examination mailed a Notice of Omitted Item(s) in a Nonprovisional Application ("Notice"), indicating, *inter alia*, that Figures 5a and 5b described in the specification appeared to have been omitted from the application. The Notice set a two-month period for reply, with extensions of time available under 37 CFR § 1.136(a).

In response, Applicant files the instant correspondence wherein Applicant avers that Figures 5a and 5b were not omitted from the application, but merely referenced in error in the specification.

¹ The mailing of a 'Notice of Omitted Item(s)' will permit the applicant to either: (1) promptly establish prior receipt in the USPTO of the drawing(s) at issue (generally by way of date-stamped postcard receipt (MPEP 503)) (by filing a petition under 37 CFR 1.53); (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date such submission as the application filing date (by filing a petition under 37 CFR 1.182); or (3) "accept the application as deposited in the USPTO [and not] respond to the 'Notice of Omitted Item(s)'" , thereby constructively accepting the application as deposited with this Office. Amendment of the specification is required . . . to cancel all references to the omitted drawing[s]. . . ." See MPEP 601.01(g).

It is obvious from the petition that no drawing Figures were actually missing on February 26, 2004. Rather, the specification was simply mislabeled as a result of Applicant's filing error. However, the Notice mailed July 30, 2004, was correct in stating that Figures 5a and 5b described in the specification appeared to have been omitted from the application. Therefore, the requirement to submit the omitted Figures set forth in the Notice will not be withdrawn.

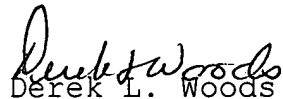
Accordingly, the petition is dismissed.

Applicants are advised that a petition is not necessary in this instance to add the drawing figures. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a). Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter. The Preliminary Amendment filed on August 10, 2004, will be considered by the primary examiner in due course.

The petition fee will not be refunded, since the petition was not necessitated by any error on the part of the USPTO.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, with the filing date of February 26, 2004, using the application papers and drawing Figures filed on that date.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0014.



Derek L. Woods
Petitions Attorney
Office of Petitions